IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2429 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SINDHYA STEAM NAVIGATION COMPANY LIMITED. & ANR. - Petitioner(s)

Versus

BOARD OF TRUSTEES OF KANDLA PORT TRUST - Respondent(s)

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Appearance :
Shri Hemant S. Shah for Petitioner(s) : 1 - 2.
Shri Alpesh Rajpuriya for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/03/2007

ORAL JUDGMENT

The petitioners, Sindhya Steam Navigation Company Limited and United Liner Agencies (India) Pvt. Ltd., are before this Court

challenging the action of the respondent praying that they be restrained from encashing the Bank Guarantee, which was furnished by the petitioners at the time of grant of the permission to reberth the vessel and permit the petitioners to offload the goods from the ship.

2. The submissions are that in accordance with the customs and systems, the duties have to be paid by the consignor or consignee and in the present case, the present petitioner is neither a consignor nor a consignee and as he does not have any title over the goods and as the property in the goods has not passed to the petitioners, they cannot be held liable. Various questions relating to damage of the cargo, cyclone disputes, etc. have been raised in this petition.

3. In the opinion of this Court, number of facts are required to be proved by leading oral evidence and by producing various documents. The petitioners, in the opinion of this Court, should have filed a civil suit seeking a declaration against the respondent. In the opinion of this Court, in view of the disputed facts, the High Court would not be the forum for deciding the matter. The petition is disposed of with liberty in favour of the petitioners to approach the appropriate Civil Court. Rule is discharged. Interim relief shall remain effective for a period of four weeks and shall lose its efficacy immediately thereafter. No costs.

[R.S.Garg, J.]

*kamlesh**